

AMERICAN CROP PROTECTION ASSOCIATION
CHEMICAL MANUFACTURERS ASSOCIATION
MID AMERICA CROP PROTECTION ASSOCIATION
SOUTHERN CROP PROTECTION ASSOCIATION
WESTERN CROP PROTECTION ASSOCIATION

1884/80

RSPA - 1997 - 12602 - 1

April 7, 1997

Dr. Dharmendra K. Sharma
Administrator
US Department of Transportation
Research and Special Programs Administration
400 Seventh Street, SW
Washington, DC 20590

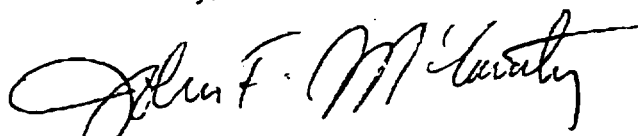
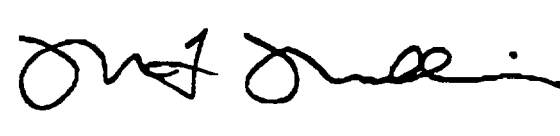
RE: Petition for Rulemaking
Transition Times in the Hazardous Materials Regulations

Dear Dr. Sharma:

Please find enclosed five copies of a petition for rulemaking submitted by the Chemical Manufacturers Association (CMA), and the American Crop Protection Association (ACPA), on behalf of Mid America Crop Protection Association, Southern Crop Protection Association, and Western Crop Protection Association. This petition requests incorporation of a transitional period into the Hazardous Materials Regulations whenever a rulemaking is finalized that affects the packaging, marking, or labeling of hazardous materials.

Thank you for the opportunity to submit this petition for rulemaking. If you need additional information or clarification, please contact Meredith Grider, CMA, at (703) 741-5256 or Tom Gilding, ACPA, at (202) 872-3873.

Sincerely,

John F. McCarthy, Ph.D.
Vice President - Global Scientific
and Regulatory Affairs

M.L. Mullins
Vice President - Regulatory Affairs
Chemical Manufacturers Association

American Crop Protection Association
1156 15th St NW Suite 400
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Enclosure

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

PETITION FOR RULEMAKING
INCORPORATION OF TRANSITION PERIODS INTO THE HAZARDOUS
MATERIALS REGULATIONS AFFECTING PACKAGING, PLACARDING,
MARKING, OR LABELING CHANGES

PETITION OF:
AMERICAN CROP PROTECTION ASSOCIATION
CHEMICAL MANUFACTURERS ASSOCIATION
MID AMERICA CROP PROTECTION ASSOCIATION
SOUTHERN CROP PROTECTION ASSOCIATION
WESTERN CROP PROTECTION ASSOCIATION

APRIL 7, 1997

In accordance with 49 CFR 106.31, the American Crop Protection Association, the Chemical Manufacturers Association, the Mid America Crop Protection Association, the Southern Crop Protection Association, and the Western Crop Protection Association, submit this petition for rulemaking. This petition requests incorporation of a transitional period into the Hazardous Materials Regulations (HMR) whenever a rulemaking is finalized that affects the packaging, marking, or labeling of hazardous materials.

Packaged hazardous materials move down the distribution chain from the basic producer to the end user. The packages change hands several times prior to reaching the end user. The distribution process normally is completed in a given sales year. However, when materials are not consumed, inventories build at all levels of the distribution chain. The inventories may be held for an extended period or the distribution may be reversed as materials are returned up the distribution chain.

In the agricultural distribution chain, often materials may be held in inventory for multiple years before re-entering the distribution network. During these periods, the agricultural chemical companies, their customers, dealers, and distributors are economically impacted when regulatory changes are imposed on packages while in distribution. Implementing regulatory change while packages are moving within the distribution chain involves substantial expenses to producers while, in some cases, there may be no justifiable gains in safety.

While the manufacturing, shipment, and use of industrial chemicals is generally not as seasonal in nature as it is for agricultural products, many of the same distribution problems occur for these products when regulatory changes are made and an inadequate transitional period is provided.

As an example, materials containing 10 pounds or more of trifluralin which were not previously classified as hazardous materials became hazardous six months after the publication of the Docket No. HM-145K final rule. Since there was no proposed rule, industry had very little time to discontinue use of existing packaging. Class 9 materials could utilize pre-HM-181 packaging until October 1, 1996, but this was of little or no benefit since any Class 9 materials packaged in non-UN Specification packaging after February 1, 1996 were required to complete transportation by October 1, 1996.

The US Department of Transportation's (DOT) Research and Special Programs Administration (RSPA) regulates hazardous waste transportation in intrastate, interstate, and foreign commerce. A "hazardous waste" is defined in the HMR (49 CFR 171.8) as "any material that is subject to the Hazardous Waste Manifest Requirements of the US Environmental Protection Agency (EPA) specified in 40 CFR Part 262." A regulatory change which caused DOT compliance problems for industry was EPA Docket No. RIN 2050-AD59, a final rule published by EPA on February 9, 1995. Under this final rule, any waste containing triallate, which was non-hazardous under both the EPA Resource Conservation and Recovery Act (RCRA) requirements and the DOT HMR until August 9, 1995, became subject to the EPA Hazardous Waste Manifest requirements specified in 40 CFR Part 262, and thus subject to the DOT HMR. This rule required UN specification packaging in place of non-specification packaging, making any remaining non-specification packagings in inventory no longer usable. As a result, it was necessary for one member company (of all of our associations) to apply for an exemption requesting authorization to finish using its remaining inventory of non-specification bulk fiberboard boxes. The notice of the application for this exemption was first published in the June 15, 1995, Federal Register and RSPA had not yet completed its review of this application as of April 4, 1997.

We believe that a reasonable time should be provided to allow industry to identify and obtain new packaging, and to use existing supplies of previously authorized packaging, when new regulations are issued. Another way of preventing future compliance problems of this type involving newly declared hazardous wastes and hazardous substances is to revise 49 CFR 173.240, 173.213, and/or 173.12 to authorize non-specification bulk bags and bulk boxes for Class 9 hazardous materials.

Amendments to the HMR to maintain alignment with corresponding provisions of the international standards, such as those implemented under DOT Docket Nos. HM-181 and HM-215A, will be required on an on-going basis. Transitional periods of approximately 21 months were incorporated into each of these final rules for hazard communication changes. A 21 month transitional period was also provided for packaging changes under HM-215A. Non-UN

Specification packaging could be manufactured for 33 months after publication of the HM-181 final rule, and any non-UN Specification packaging manufactured prior to October 1, 1994 could be used for an additional 24 months.

RSPA has demonstrated that extended transition periods do not necessarily have an adverse impact on safety. The transitional period for compliance with HM-181 is a prime example of a workable extended transitional period for implementation of regulatory changes. Given the logistics of implementing regulatory changes through multiple level distribution chains, we respectfully request a similar transitional period be granted whenever a rulemaking is implemented that affects hazard communication or packaging requirements, unless the Administrator determines that an immediate change is necessary to maintain an acceptable level of transportation safety.

We also request that 49 CFR 171.14 (b) (2), "Intermixing old and new requirements", be revised to clarify that intermixing is allowed for proper shipping names containing the same key words under both the old and the new requirements. For example, as indicated in a DOT written interpretation dated September 25, 1995, a material classified as "Corrosive liquid, n.o.s. (technical name), 8, UN1760, III" which changed to "Corrosive liquid, acidic, inorganic, n.o.s. (technical name), 8, UN3264, III" under HM-215A qualified for the intermixing provisions. We believe that it is safe and reasonable to do this, and it eases the compliance burden on industry.

Managing transition requirements for pre-printed shipping papers and/or automated documentation systems with labels and markings, while managing already packaged inventory, is an extremely complex process. The Intermixing provision is extremely useful. Computerized Bill of Lading systems can be updated immediately with new DOT information while packagings marked with old DOT information are gradually phased out. The flexibility provided by the Intermixing provision reduces the difficulty and the potential non-compliance of simultaneously changing all package markings and shipping papers.

Other examples of materials which would qualify under the proposed intermixing provisions are: "Elevated temperature liquid, flammable, n.o.s., 3, UN3256, III", which was previously "Flammable liquids, elevated temperature material, n.o.s., 3, NA9276, III"; "Toxic liquid, inorganic, n.o.s. (technical name), 6.1, UN3287, III", which was previously "Poisonous liquids, n.o.s. (technical name), 6.1 UN2810, III"; and "Self-heating solid, inorganic, n.o.s. (technical name), 4.2, UN3190, II", which was previously "Self-heating substances, solid, n.o.s. (technical name), 4.2, UN3088, II."

A number of other materials were modified under HM-215A by deleting the letters "n.o.s." at the end of the proper shipping names, with no other changes. Minor revisions are being made to the proper shipping names for numerous other materials under HM-215B, such as adding or deleting the words "inhibited", "compressed", "solution", "liquified", "inorganic", or "solid". Since the key words of these proper shipping names are not changing and there is no safety impact from such changes, we request that any packages containing materials modified in this manner which are still marked with the letters "n.o.s." be allowed to be transported under the intermixing provisions as long as they were filled prior to the effective date of the final rule.

These transitional provisions would allow shippers to change shipping descriptions immediately for some materials, simplifying the implementation of new descriptions when some packages with old markings and other packages with new markings are both in the distribution channels.

An additional concern for end-users is whether packages in inventory with markings, labels, or placards which no longer comply with the current HMR would be in violation of the OSHA 29 CFR 1910.1201, 1915.100, 1917.29, 1918.100 and 1926.61 requirements concerning retention of DOT markings, labels, and placards "in accordance with the U.S. Department of Transportation's Hazardous Materials Regulations." A longer transitional period would provide more time for end-users to complete the consumption of the products that they receive, eliminating any question about compliance with OSHA's rule "Retention of DOT Markings, Placards, and Labels." (59 CFR 36695)

Specific revisions to the text are proposed as follows:

We propose that the title of 49 CFR 171.14 be changed from "Transitional provisions for implementing requirements based on the UN Recommendations" to "Transitional provisions for implementing new requirements." We propose that a standard transitional provision be incorporated into this paragraph which reads:

(a) The purpose of this section is to provide an orderly transitional period when a rule change is implemented that affects hazard communication or packaging requirements.

(b)

(1) The transitional provisions of paragraph (c) of this section apply to any new rule change unless deemed by the Administrator that an immediate change is necessary to maintain an acceptable level of transportation safety.

(2) Intermixing old and new requirements. Prior to the transition date in paragraph (c) of this section, it is recommended that hazard communication requirements be consistent where practicable, i.e., marking, labeling, placarding, and shipping paper descriptions should conform to either the old requirements of this subchapter in effect prior to the effective date of a final rule, or new requirements of this subchapter added or revised by the rule, without intermixing of communication elements. However, intermixing is permitted, during the applicable transition period, for packaging, hazard communication, and handling provisions, as follows:

(i) If either the key words of shipping names or identification numbers are identical, a shipping paper may display the old shipping description even if the package is marked and labeled under the new shipping description;

(ii) If either the key words of shipping names or identification numbers are identical, a shipping paper may display the new shipping description even if the package is marked and labeled under the old shipping description;

(iii) Either old or new placards may be used regardless of whether old or new shipping descriptions and package markings are used;

(iv) Either old or new labels may be used regardless of whether old or new shipping descriptions and package markings are used;

(c) Notwithstanding the provisions of a new rule change that affects the DOT hazard communication or packaging requirements, including DOT or EPA RCRA rules, a hazardous material may be offered for transportation and transported, and packagings may be manufactured, maintained, and used in accordance with the provisions of this subchapter until a minimum of the following time periods expire:

- (1) One (1) year with regard to the manufacture, marking, and filling of packagings which were authorized prior to the effective date of the final rule.
- (2) Two (2) years following the effective date of the final rule with regard to classification and hazard communication provisions of parts 172 and 173 of this subchapter.
- (3) Three (3) years with regard to the maintenance and use of filled packagings which were authorized prior to the effective date of the final rule.

The American Crop Protection Association, the Chemical Manufacturers Association, the Mid America Crop Protection Association, the Southern Crop Protection Association, and the Western Crop Protection Association, appreciate the Research and Special Programs Administration's consideration of this petition for rulemaking. We believe that incorporation of these changes into the HMR will ease regulatory compliance without jeopardizing safety.